

APPENDIX.

Judgment of the Court of Appeals.

United States Court of Appeals, For the Seventh Circuit,
Chicago, Illinois 60604.

September 22, 1982.

Before: Hon. *WILBUR F. PELL, JR.*, Circuit Judge,
Hon. *JESSE ESCHBACH*, Circuit Judge. Hon. *RICHARD
A. POSNER*, Circuit Judge.

Raymond Allen, etc. et al., Plaintiffs-Appellees, vs.
Marshall Field & Company, Defendant-Appellant. No.
82-1667.

Appeal from the United States District Court for the
Northern District of Illinois Eastern Division.

No. 81 C 5811. Judge Hubert L. Will.

The Court has considered the following documents:

1. The "MOTION TO DISMISS APPEAL" filed on
June 3, 1982, by counsel for the plaintiffs-appellees.
2. The "APPELLANT'S STATEMENT AND SUP-
PORTING MEMORANDUM RE JURISDICTION"
filed on June 7, 1982.
3. The "'APPELLEES' MEMORANDUM IN RE-
SPONSE TO APPELLANTS' MEMORANDUM
ON JURISDICTION" filed on June 8, 1982.

We DENY appellees' Motion to Dismiss and accept ju-
risdiction over this appeal pursuant to the collateral order
doctrine in *Cohen v. Beneficial Industrial Loan Corp.*, 337
U.S. 541 (1949).

On January 21, 1982, the district court authorized notice
of the pending action, and consent forms by which to join
the action, to be sent to prospective plaintiffs. Defendant-
appellant, Marshall Field & Company, has filed a notice
of appeal from the order of the district court denying its

motion to strike consents and to dismiss those persons filing consents from this action brought under the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. Appellant is also appealing the denial of its motion for certification of the appeal and its motion for a stay of the proceedings before the district court.

Questions of certification and stay were addressed in the petition for writ of mandamus filed by appellant in Appeal No. 82-1708. The Petition for Writ of Mandamus was denied by this Court on May 27, 1982.

In a recently decided appeal this Court addressed the issue of whether a district judge has the power to notify prospective plaintiffs that an Age Discrimination in Employment action has been brought; and if so, how he should exercise that power. *Woods v. New York Life Insurance Co.*, No. 82-1827 (7th Cir. August 16, 1982). In *Woods* this Court affirmed the district court's power to authorize notice by the plaintiff or his counsel to members of the class; however, the court also held that suitable notice should not appear under a judicial letterhead and should not be signed by a judicial officer.

It appears that the notice and consent forms authorized by the district court to be sent in this case are not in compliance with this Court's holding in *Woods*. For this reason, although we *affirm* that part of the district court's order authorizing that notice be sent, we *reverse* the order insofar as it prescribes an incorrect form of notice, and *remand* to the district court to fashion appropriate relief.*

*Compare *Parlow v. Jewish Orphans' Home of Southern Cal.*, 645 F.2d 757 (9th Cir. 1981), a suit brought under the Fair Labor Standards Act. In that case the district court order tolled the statute of limitations for filing suit under the FLSA for 45 days to allow potential plaintiffs, whose previously filed consents were ineffective, to file proper consent with the court.

Minute Order of District Court.

United States District Court, Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable HUBERT L. WILL.

Cause No.: 81 C 5811.

Title of Cause: Allen v. Marshall Field & Co.

Date: March 25, 1982.

Brief Statement of Motion: SH.

Status hearing held. MEMORANDUM OPINION to be filed within a short date regarding the court's ruling on pending motions. Defendant is given to and including April 14, 1982 to file its answer to the complaint. On defendant's motion, enter STIPULATION AND ORDER RE DISCOVERY. DRAFT. (DRAFT CONTAINED IN STIPULATION.) Enter STIPULATION AND ORDER PERTAINING TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS. DRAFT. (DRAFT CONTAINED IN STIPULATION.) Draft order to be submitted within a short date regarding plaintiffs' motion to approve additional mailing to opt-in plaintiffs who have not retained an attorney. Defendant's motion to require persons who have opted-in to designate their attorney of record is mooted. Defendant's motion to strike consents and to dismiss those persons filing consents from this action is denied. Defendant's motion for certification for appeal and a stay of the present action of any order denying defendant's motion to strike consents and to dismiss those persons filing consents from this action is denied. Revised order to be submitted within a short date regarding defendant's motion to permit defendant to interview its employees, CONNOR SHAW, and AUREL CAPRINI. Status hearing is continued to May 20, 1982.

List of Respondents.

ORIGINAL NAMED PLAINTIFFS:

Allen, Raymond
Bosman, Peter
Bunn, Carol E.
Kaiser, Karl C.

**PLAINTIFFS WHO FILED CONSENTS TO JOIN
ACTION BEFORE APPEAL, AND WHO ARE STILL
IN ACTION**

Atwell, Ned
Bartell, Findley
Bojar, Clement
Bone, William
Bonifield, Wayne
Bose, Theodore
Bradford, Ralph
Buckley, Robert
Caprini, Aurel
Carlson, Donald
Cartwright, Glenn
Chamberlain-Swenson, Marie
Colborne, Robert
Cuttie, Nola
Eckersley, Virginia
Eis, Edith
Emerson, Gene
Emerson, Mary Lou
Feary, Leo
Flesner, Eugene
Francis, Glen
Gianopulos, Bess
Green, Betty
Hackbert, Mary

Hermann, Ann
Jackson, Lillian
Kandl, Marie
Kirk, William
Knox, Robert
Krueger, Margery
Kuhn, Grace
Lantz, Annetta
Leeney, James
Lyon, Donlyn
Mack, Terry
Malsack, Richard
Marquetty, Gerard
Marsch, Harold
Mason, Shirley
Maxfield, Kenneth
Moffat, James
Moran, Harry
Newbould, Betty
Romann, Ruth
Sanders, Jack
Scupham, Patricia
Shaw, Connor
Shields, Vincent
Slayden, James
Smilanik, Mary Jane
Snedden, Donna
Stevens, Robert
Sykes, Andrew
Trempe, Helen
Urbain, Genevieve

**PLAINTIFFS WHO FILED CONSENTS TO JOIN
ACTION, BUT WHO HAVE BEEN DISMISSED**

Cheslak, Mary
Darmicke, Marilyn
DeBouver, Ronald V.

Johnson, Ramona
Marasa, Victor
McKinsey, Phyllis
Murello, Ralph
Savage, Norbert
Warner, Rodney

PLAINTIFFS WHO FILED CONSENTS TO JOIN
ACTION PURSUANT TO COURT AUTHORIZED
NOTICE AFTER APPEAL

Baschnonga, Stephen A.
Boldt, Heinrich
Catanzaro, Donald R.
Clabough, Carl W.
Crowley, Thomas
Dutton, Richard R.
Hansen, James R.
Houston, Robert
Kandl, Marie H.
Serpico, Felix
Siegel, Sheldon A.
Spiegelhoff, Karl A.
Zuncic, Frank